EFFECTS OF SB 07 AND HB 4572 ON PUBLIC HOUSING COMMISSIONS

Detroit Housing Commission

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Background: Housing commissions are public body corporates created by a City, county or township pursuant to the Michigan Housing Facilities Act, 1933 PA 18, MCL 125.651 to 125.709c They exist to implement the federal Housing Act of 1933 and provide affordable housing to low-income individuals. The affordable housing programs offered are the Low-Income Public Housing Program ("LIPH") and the Assisted Housing Program a/k/a Section 8 Voucher Program ("Section 8"). Both programs are designed to serve low-income persons requiring housing assistance. The majority of the Michigan housing commissions offer both programs although some only offer one of them.

The funding for housing commissions predominately emanates from the United States Department of Housing and Urban Development ("HUD"). The funds received from the creating local government entity are non-existent in the vast majority of instances. The Detroit Housing Commission ("DHC"), for example, receives NO operating funds from the City of Detroit ("City"), its creating governmental entity.

DHC, until August 1, 2004, was a department of the City when it became a separate employer. The Michigan Supreme Court held DHC is a separate employer in AFSCME, et al v City of Detroit, et al,468 Mich 388 (2003). As a separate employer, DHC, not the City, is responsible for the compensation and benefits offered to its employees. There are several other housing commissions throughout the state that are also independent of their creating government entity. However, the vast majority of Michigan housing commissions are still part of the creating governmental entity.

As a responsible employer, in order to provide sustainable healthcare in a fiscally responsible manner, DHC has negotiated, to start next fiscal year, a minimum 10% premium payment with one of its unions and has the same proposal on the table with another of its unions. It has also informed its non-represented employees that they will be required to pay a minimum of 10% of health care premiums as well. Effective July 1, 2011, DHC will also have its non-represented staff and the members of two unions contributing 5% of wages toward their defined benefit pension. We have the same proposal on the table with the last of our unions.

These actions clearly indicate that DHC is addressing the costs of the benefits it provides to its employees in a fiscally responsible manner.

Problem with SB 07: The purpose of SB 07 is to save taxpayer dollars for Michigan public employers in the provision of health care to its employees. This is a laudable goal. As it relates to Michigan local units of government that receive funding for general fund purposes from state and local taxpayers, there may be savings that can inure to the benefit of the general fund to be used to defray other expenses in these days of tight budgets. However, as it relates to housing commissions, whether they are autonomous from their creating government entity or not, any savings they have as a result of complying with SB 07 would NOT be available to the creating government entity because of the source of funds used for operating housing commissions. HUD funds provided to housing commissions are restricted in use. They can only be used in support of the LIPH Program or the Section 8 Program; commingling with City funds is prohibited. Therefore, any savings incurred from complying with SB 07 cannot benefit the general fund of the creating government entity. Based upon current and projected HUD funding levels, housing commissions are tightening their belts to ensure continued financial viability. SB 07 imposes unnecessary constraints on how housing commissions can approach achieving and maintaining financial viability.

Housing commissions have their own governing body, appointed by the chief executive of the creating government entity. The board has the power to appoint an executive director and approve budgets that include compensation and benefits for the employees of the housing commission. SB 07 does not include housing commissions in the definition of a "local unit of government" permitted to opt-out of the provisions of SB 07. In light of the fact housing commissions have their own governing bodies and receive negligible funding from local governments, they should have the ability to opt-out of the requirements of SB 07 and determine what course of action is fiscally best for them. Clearly, there will be some housing commissions who will follow the lead of their creating government entity because of the intertwined nature of their employees and benefit plans. However, even in those situations, savings of the housing commission cannot go to the general fund of the creating government entity.

Regardless of whether a housing commission is independent of its creating government entity, since any savings it incurs as a result of compliance with SB 07 cannot inure to the benefit of the creating government entity's general fund and since the operating funds of housing commissions comes from HUD not the creating government entity, housing commissions should have the ability to opt-out of the requirements of SB 07. SB 07 can be amended by adding housing commissions to the definition of a "local unit of government" in Section 3. The language of Section 3 would read as follows (new language capitalized):

> **(b) "Local unit of government" means a city, county, township, authoritycreated under 1939 PA 147, MCL 119.51 to 119.62, COMMISSION CREATED UNDER 1933 PA 18, MCL 125.651 TO 125.709c, or village.**

Problem with HB 4572: The problem with this bill is that it does not permit opt-out by any public employer. For the reasons stated above, housing commissions should be allowed to opt-out.

Secondarily, if this bill is adopted using the Consumer Price Index ("CPI") for annual adjustments, it would not keep pace with the projected cost of healthcare increases. Health care costs have had annual double digit increases in recent years. Health insurance experts are predicting increases between 9 and 11 percent for 2011. The CPI has ranged from 0.4 to 3.8 percent annually for the last 10 years. Thus, it would not be able to keep pace with anticipated health care increases. Another mechanism needs to be devised to ensure appropriate adjustments to the caps.

Summary: Housing commissions have the same responsibility to be fiscally responsible as other public employers. However, their situation is unique because based on their source of funds and the restrictions on the use of the funds any savings they incur complying with SB 07 or HB 4572 cannot inure to the benefit of the general fund of the creating government entity. They have their own governing bodies that are charged with approving budgets that include employee compensation and benefits and should have the flexibility to decide for themselves how best to approach achieving and maintaining financial viability.